

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

SCOTT MILLER, an individual, on behalf of himself, the general public and those similarly situated;

CASE NO. CV 17-1470-DMG (GJSx)

STIPULATED PROTECTIVE ORDER

Judge: Hon. Dolly M. Gee
Magistrate: Gail J. Standish

VS.

YUCATAN FOODS, L.P.; and DOES
1-50;

Defendants.

1. A. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action is likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate (“Stipulation”) to and request that the Court enter the following Stipulated Protective Order (“Order”). The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public

1 disclosure and use extends only to the limited information or items that are
2 entitled to confidential treatment under the applicable legal principles. The
3 parties further acknowledge, as set forth in Paragraph 12.4, below, that this
4 Order does not entitle them to file confidential information under seal; Civil
5 Local Rule 79-5 and General Order 62 set forth the procedures that must be
6 followed and the standards that will be applied when a party seeks permission
7 from the Court to file material under seal.

8 **B. GOOD CAUSE STATEMENT**

9 This action is likely to involve trade secrets, customer and pricing lists
10 and other valuable research, development, commercial, financial, technical
11 and/or proprietary information for which special protection from public
12 disclosure and from use for any purpose other than prosecution of this action
13 is warranted. Such confidential and proprietary materials and information
14 consist of, among other things, confidential business or financial information,
15 information regarding confidential business practices, or other confidential
16 research, development, or commercial information (including information
17 implicating privacy rights of third parties), information otherwise generally
18 unavailable to the public, or which may be privileged or otherwise protected
19 from disclosure under state or federal statutes, court rules, case decisions, or
20 common law. Accordingly, to expedite the flow of information, to facilitate
21 the prompt resolution of disputes over confidentiality of discovery materials,
22 to adequately protect information the parties are entitled to keep confidential,
23 to ensure that the parties are permitted reasonable necessary uses of such
24 material in preparation for and in the conduct of trial, to address their
25 handling at the end of the litigation, and serve the ends of justice, a protective
26 order for such information is justified in this matter. It is the intent of the
27 parties that information will not be designated as confidential for tactical
28 reasons and that nothing be so designated without a good faith belief that it

1 has been maintained in a confidential, non-public manner, and there is good
2 cause why it should not be part of the public record of this case.
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4 **2. DEFINITIONS**

5 2.1 Action: This pending federal lawsuit, *Scott Miller v. Yucatan*
6 *Foods, L.P.*, United State District Court, Central District of California,
7 2:17-cv-01470-DMG-GJS, and the state court lawsuit from which it was
8 removed, *Scott Miller v. Yucatan Foods, L.P.*, Superior Court of the State
9 of California, County of Los Angeles, BC645421.

10 2.2 Challenging Party: a Party or Non-Party that challenges the
11 designation of information or items under this Order.

12 2.2 CONFIDENTIAL Information or Items: information
13 (regardless of how it is generated, stored or maintained) or tangible things
14 that qualify for protection under Federal Rule of Civil Procedure 26(c),
15 which may include:

16 (a) Information that constitutes a trade secret in accordance
17 with Uniform Trade Secrets Act;

18 (b) Non-public communications with regulators or other
19 governmental bodies that are protected from disclosure by statute or
20 regulation; and/or

21 (c) Information, materials, and/or other documents reflecting
22 non-public business or financial strategies, and/or confidential competitive
23 information which, if disclosed, would result in competitive harm to the
24 disclosing party.

25 However, the protections conferred by this Order do not cover
26 the following information:

27 (a) any information that is in the public domain at the time of
28 disclosure to a Receiving Party or becomes part of the public domain after
its disclosure to a Receiving Party as a result of publication not involving a

1 violation of this Order, including becoming part of the public record
2 through trial or otherwise; and/or
3

4 (b) any information known to the Receiving Party prior to the
5 disclosure or obtained by the Receiving Party after the disclosure from a
6 source who obtained the information lawfully and under no obligation of
7 confidentiality to the Designating Party.

8 2.3 Counsel (without qualifier): Outside Counsel of Record and
9 In-House Counsel (as well as their support staff).

10 2.4 Designating Party: a Party or Non-Party that designates
11 information or items that it produces in disclosures or in responses to
12 discovery as “CONFIDENTIAL.”

13 2.5 Disclosure or Discovery Material: all items or information,
14 regardless of the medium or manner in which it is generated, stored, or
15 maintained (including, among other things, testimony, transcripts, and
16 tangible things), that are produced or generated in disclosures or responses
17 to discovery in this matter, including but not limited to, answers to
18 interrogatories, responses to requests for production, responses to requests for
19 admission, and transcripts of depositions and hearings (or portions of such
20 transcripts).

21 2.6 Expert: a person with specialized knowledge or experience in a
22 matter pertinent to the litigation who has been retained by a Party or its
23 counsel to serve as an expert witness or as a consultant in this Action.

24 2.7 In-House Counsel: attorneys who are employees of a Party to
25 this Action. In-House Counsel does not include Outside Counsel of
26 Record or any other outside counsel.

27 2.8 Non-Party: any natural person, partnership, corporation,
28 association, or other legal entity not named as a Party to this Action.

1 2.9 Outside Counsel of Record: attorneys who are not employees
2 of a party to this Action but are retained to represent or advise a party to
3 this Action and have appeared in this Action on behalf of that party or are
4 affiliated and/or associated with a law firm which has appeared on behalf
5 of that party, and their support staff.

6 2.10 Party: any party to this Action, including all of its officers,
7 directors, employees, Experts, and Outside Counsel of Record (and their
8 support staffs).

9 2.11 Producing Party: a Party or non-Party that produces Disclosure
10 or Discovery Material in this Action.

11 2.12 Professional Vendors: persons or entities that provide litigation
12 support services (e.g., photocopying, videotaping, translating, preparing
13 exhibits or demonstrations, and organizing, storing, or retrieving data in
14 any form or medium) to a Party and their employees and subcontractors.

15 2.13 Protected Material: any Disclosure or Discovery Material that
16 is designated as “CONFIDENTIAL.”

17 2.14 Receiving Party: a Party that received Disclosure or Discovery
18 Material from a Producing Party.

20 **3. SCOPE**

21 The protections conferred by this Stipulation and Order cover not
22 only Protected Material (as defined above), but also (1) any information
23 copied or extracted from Protected Material; (2) all copies, excerpts,
24 summaries, or compilations of Protected Material; and (3) any testimony,
25 conversations, or presentation by Parties or their Counsel that might reveal
26 Protected Material. Any use of Protected Material at trial shall be governed
27 by the orders of the trial judge. This Order does not govern the use of
28 Protected Material at trial.

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2 **4. DURATION**

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4 Even after final disposition of this litigation, the confidentiality
5 obligations imposed by this Order shall remain in effect until a Designating
6 Party agrees otherwise in writing or a court order otherwise directs. Final
7 disposition shall be deemed to be the later of (1) dismissal of all claims and
8 defenses in this Action, with or without prejudice; and (2) final judgment
9 herein after the completion and exhaustion of all appeals, rehearings,
10 remands, trials, or reviews of this Action, including the time limits for
11 filing any motions or applications for extension of time pursuant to
12 applicable law. For a period of six (6) months after final disposition of this
13 litigation, this Court will retain jurisdiction to enforce the terms of this
14 Order.

15 **5. DESIGNATING PROTECTED MATERIAL**

16 **5.1 Exercise of Restraint and Care in Designating Material for**
17 **Protection.** Each Party or Non-Party that designates information or items
18 for protection under this Order must take care to limit any such designation
19 to specific material that qualifies under the appropriate standards. The
20 Designating Party must designate for protection only those parts of
21 material, documents, items, or oral or written communications that qualify
22 – so that other portions of the material, documents, items, or
23 communications for which protection is not warranted are not swept
24 unjustifiably within the ambit of this Order. Mass, indiscriminate, or
25 routinized designations are prohibited. Designations that are shown to be
26 clearly unjustified or have been made for an improper purpose (e.g., to
27 unnecessarily encumber or retard the case development process or to
28 impose unnecessary expenses and burdens on other parties) expose the
Designating Party to sanctions. If it comes to a Designating Party's
attention that information or items that it designated for protection do not

1 qualify for protection that Designating Party must promptly notify all other
2 Parties that it is withdrawing the inapplicable designation.

3 5.2 Manner and Timing of Designations. Except as otherwise
4 provided in this Order (see, e.g., Paragraph 5.2(b) below), or as otherwise
5 stipulated or ordered, Disclosure or Discovery Material that qualifies for
6 protection under this Order must be clearly so designated before the
7 material is disclosed or produced.

8 Designation in conformity with this Order requires:

9 (a) For information in documentary form (e.g., paper or
10 electronic documents, but excluding transcripts of depositions or other
11 pretrial or trial proceedings), that the Producing Party affix the legend
12 “CONFIDENTIAL” to each page that contains protected material or to the
13 cover page of bound or grouped material. If only a portion or portions of
14 the material on a page qualifies for protection, the Producing Party also
15 must clearly identify the protected portion(s) (e.g., by making appropriate
16 markings in the margins).

17 (b) For testimony given in deposition or in other pretrial or
18 trial proceedings, that the Designating Party identify on the record, before
19 the close of the deposition, hearing, or other proceeding, or within thirty
20 (30) days of receipt of the deposition transcript from the court reporter
21 (“30-day period”) all protected testimony, Disclosure or Discovery
22 Material. The entire deposition transcript will be considered by the Parties
23 as “CONFIDENTIAL” during the 30-day period. After the 30-day period,
24 if no Party has designated some or all of that deposition transcript as
25 “CONFIDENTIAL” under this Protective Order, the entire deposition, or
26 those portions of the deposition not designated as confidential, will no
27 longer be considered confidential.

(c) For information produced in some form other than documentary and for any other tangible items, that the Producing Party affix in a prominent place on the exterior of the container or containers in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent practicable, shall identify the protected portion(s). For any information transmitted by electronic means, the label "CONFIDENTIAL" shall appear on the subject of the electronic mail, or on the title of the digital document or documents or other media through which they are conveyed.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time that is consistent with the Court's Scheduling Order.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process under Local Rule 37-1 *et seq.*

6.3 Judicial Intervention. If the Meet and Confer does not resolve the Parties' dispute as to the at-issue designations, the challenge may be submitted to the Court via a joint stipulation pursuant to Local Rule 37-2. The burden of proving the confidentiality of designated persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges, and those made for an improper purpose (e.g., to harass or

1 impose unnecessary expenses and burdens on the other parties) may expose
2 the Challenging Party to sanctions. Unless the Designating Party has
3 expressly waived the confidentiality designation or until the court has ruled
4 on the disputed at-issue designation, all parties shall continue to afford the
5 material in question the level of protection to which it is entitled under the
6 Producing Party's designation until the Court rules on the challenge.

7. **ACCESS TO AND USE OF PROTECTED MATERIAL**

8. 7.1 Basic Principles. A Receiving Party may use Protected
9 Material that is disclosed or produced by another Party or by a Non-Party
10 in connection with this case only for prosecuting, defending, or attempting
11 to settle this litigation. Such Protected Material may be disclosed only to
12 the categories of persons and under the conditions described in this Order.
13 When the litigation has been terminated, a Receiving Party must comply
14 with the provisions of paragraph 13 below (FINAL DISPOSITION).

15 Protected Material must be stored and maintained by a Receiving Party at a
16 location and in a secure manner that ensures that access is limited to the
17 persons authorized under this Order.

18. 7.2 Disclosure of “CONFIDENTIAL” Information or Items.
19 Unless otherwise ordered by the Court or permitted in writing by the
20 Designating Party, a Receiving Party may disclose any information or item
21 designated “CONFIDENTIAL” only to the following individuals under the
22 following conditions:

23. (a) the Receiving Party's Outside Counsel of Record in this
24 Action, as well as employees of said Outside Counsel of Record to whom it
25 is reasonably necessary to disclose the information for this litigation;

26. (b) The Parties and the directors, officers, and employees
27 (including In-House Counsel) who are assisting with or making decisions
28 concerning this Action, only to the extent deemed reasonably necessary by

1 the Receiving Party's Outside Counsel of Record for the purpose of
2 assisting in the prosecution or defense of the Action for use in accordance
3 with this Protective Order;

4 (c) Experts (as defined in this Order) of the Producing Party
5 may be shown or examined on any information, document or thing
6 designated "CONFIDENTIAL" by the Producing Party;

7 (d) Experts of the Receiving Party to whom disclosure is
8 reasonably necessary for this litigation and who have signed the
9 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

10 (d) the Court and its personnel;

11 (e) court reporters and their staff, professional jury or trial
12 consultants, mock jurors, and Professional Vendors to whom disclosure is
13 reasonably necessary for this Action and who have signed the
14 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

15 (f) any deponent may be shown or examined on any
16 information, document or thing designated "CONFIDENTIAL" if it
17 appears that the witness authored or received a copy of it or if the
18 Producing Party consents to such disclosure, provided that any deponent
19 who is no longer employed by the Producing Party shall be first required to
20 sign the Acknowledgment and Agreement to Be Bound" (Exhibit A);

21 (g) any other person as to whom the Designating Party has
22 consented to disclosure in advance;

23 (h) such other persons as the parties may agree or may be
24 ordered by the Court; and

25 (i) any mediator or settlement officer, and their supporting
26 personnel, mutually agreed upon by any of the Parties engaged in
27 settlement discussions

1 **8. PROTECTED MATERIAL SUBPOENAED OR ORDERED**
2 **PRODUCED IN OTHER LITIGATION**

3 If a Receiving Party is served with a subpoena or a court order issued
4 in other litigation that would compel disclosure of any information or items
5 designated in this Action as “CONFIDENTIAL,” the Receiving Party
6 must:

7 (a) promptly notify in writing the Designating Party (by fax
8 and email, if possible). Such notification must include a copy of the
9 subpoena or court order;

10 (b) promptly notify in writing the party who caused the
11 subpoena or order to issue in the other litigation that some or all of the
12 material covered by the subpoena or order is subject to this Order. Such
13 notification shall include a copy of this Order; and

14 (c) cooperate with respect to all reasonable procedures sought
15 to be pursued by the Designating Party whose Protected Material may be
16 affected.

17 If the Designating Party timely seeks a protective order, the
18 Receiving Party served with the subpoena or court order shall not produce
19 any information designated in this Action as “CONFIDENTIAL” before a
20 determination by the court from which the subpoena or order issued, unless
21 the Party has obtained the Designating Party’s permission. The
22 Designating Party shall bear the burden and expense of seeking production
23 in that court of its confidential material – and nothing in these provisions
24 should be construed as authorizing or encouraging a Receiving Party in this
25 Action to disobey a lawful directive from another court.

1 **9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO**
2 **BE PRODUCED IN THIS LITIGATION**

3 (a) The terms of this Order are applicable to information produced
4 by a Non- Party in this Action and designated as “CONFIDENTIAL.”
5 Such information produced by Non-Parties in connection with this
6 litigation is protected by the remedies and relief provided by this Order.
7 Nothing in these provisions should be construed as prohibiting a Non-Party
8 from seeking additional protections.

9 (b) In the event that a Party is required, by a valid discovery request,
10 to produce a Non-Party’s confidential information in its possession, and
11 the Party is subject to an agreement with the Non-Party not to produce the
12 Non-Party's confidential information, then the Party shall:

13 (1) promptly notify in writing the Requesting Party and the
14 Non-Party that some or all of the information requested is
15 subject to a confidentiality agreement with a Non-Party;
16 (2) promptly provide the Non-Party with a copy of the Order
17 in this litigation, the relevant discovery request(s), and a
18 reasonably specific description of the information requested;
19 and
20 (3) make the information requested available for inspection by
21 the Non-Party.

22 (c) If the Non-Party fails to object or seek a protective order from
23 this Court within 14 days of receiving the notice and accompanying
24 information, the Receiving Party may produce the Non-Party’s
25 confidential information responsive to the discovery request. If the
26 Non-Party timely seeks a protective order, the Receiving Party shall not
27 produce any information in its possession or control that is subject to the
28 confidentiality agreement with the Non-Party before determination by the

1 Court.¹ Absent a Court order to the contrary, the Non-Party shall bear the
2 burden and expense of seeking protection in this court of its Protected
3 Material. All disclosure and discovery disputes are subject to the
4 undersigned's Standing Order Regarding Civil Discovery Disputes.

5 **10. UNAUTHORIZED DISCLOSURE OF PROTECTED**
6 **MATERIAL**

7 If a Receiving Party learns that, by inadvertence or otherwise, it
8 has disclosed Protected Material to any person or in any circumstance
9 not authorized under this Order, the Receiving Party must immediately
10 (a) notify in writing the Designating Party of the unauthorized
11 disclosures, (b) use its best efforts to retrieve all unauthorized copies of
12 the Protected Material, (c) inform the person or persons to whom
13 unauthorized disclosures were made of all the terms of this Order, and
14 (d) request such person or persons to execute the "Acknowledgement
15 and Agreement to Be Bound" that is attached hereto as Exhibit A.

16 **11. INADVERTENT PRODUCTION OF PRIVILEGED OR**
17 **OTHERWISE PROTECTED MATERIAL**

18 When a Producing Party gives notice to Receiving Parties that
19 certain inadvertently produced material is subject to a claim of privilege
20 or other protection, the obligations of the Receiving Parties are those set
21 forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is
22 not intended to modify whatever procedure may be established in an e-
23 discovery order that provides for production without prior privilege
24 review. Pursuant to the Federal Rule of Evidence 502(d) and (e), insofar
25 as the parties reach an agreement on the effect of disclosure of a

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¹ The purpose of this provision is to alert the interested parties to the existence of
28 confidentiality rights of a Non-Party and to afford the Non-Party an opportunity to protect
its confidentiality interests in this Court.

1 communication or information covered by the attorney-client privilege
2 or work product protection, the parties may incorporate their agreement
3 in the stipulated protective order submitted to the Court.

4 **12. MISCELLANEOUS**

5 12.1 Right to Further Relief. Nothing in this Order abridges the
6 right of any person to seek its modification by the Court in the future.

7 12.2 Right to Assert Other Objections. By stipulating to the entry
8 of this Protective Order no Party waives any right it otherwise would
9 have to object to disclosing or producing any information or item on any
10 ground not addressed in this Stipulated Protective Order. Similarly, no
11 Party waives any right to object on any ground to use in evidence of any
12 of the material covered by this Protective Order.

13 12.3 No Modification of Privileges. Nothing in this Order shall
14 modify the law regarding the attorney-client privilege, the attorney work
15 product doctrine, the joint defense privilege, and any other applicable
16 privilege or reason for non-disclosure with respect to trade secrets or
17 other confidential research, development or commercial information to
18 the extent such privilege exists under applicable law.

19 12.4 Filing Protected Material. Without written permission from
20 the Designating Party or a Court order secured after appropriate notice
21 to all interested persons, a Party may not file in the public record in this
22 Action any Protected Material. A Party that seeks to file under seal any
23 Protected Material must comply with Civil Local Rule 79-5 and General
24 Order 62. Protected Material may only be filed under seal pursuant to a
25 Court order authorizing the sealing of the specific Protected Material at
26 issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a
27 sealing order will issue only upon a request establishing that the
28 Protected Material at issue is privileged, protectable as a trade secret, or

1 otherwise entitled to protection under the law. If a Receiving Party's
2 request to file Protected Material under seal pursuant to Civil Local Rule
3 79-5(d) and General Order 62 is denied by the Court, then the Receiving
4 Party may file the information in the public record pursuant to Civil
5 Local Rule 79-5(e) unless otherwise instructed by the Court.

6 **13. FINAL DISPOSITION**

7 Unless otherwise ordered or agreed in writing by the Producing
8 Party, within sixty (60) days after the final disposition of this Action, as
9 defined in paragraph 4, above, each Receiving Party must return all
10 Protected Material to the Producing Party or destroy such material. As
11 used in this subdivision, "all Protected Material" includes all copies,
12 abstracts, compilations, summaries, and any other format reproducing or
13 capturing any of the Protected Material. Whether the Protected Material
14 is returned or destroyed, the Receiving Party must submit a written
15 certification to the Producing Party (and, if not the same person or
16 entity, to the Designating Party) by the sixty (60) day deadline that (1)
17 identifies (by category, where appropriate) all the Protected Material that
18 was returned or destroyed and (2) affirms that the Receiving Party has
19 not retained any copies, abstracts, compilations, summaries or any other
20 format reproducing or capturing any of the Protected Material.

21 Notwithstanding this provision, Counsel are entitled to retain an archival
22 copy of all pleadings, motion papers, trial, deposition, and hearing
23 transcripts, legal memoranda, correspondence, deposition and trial
24 exhibits, expert reports, attorney work product, and consultant and
25 expert work product, even if such materials contain Protected Material.
26 Any such archival copies that contain or constitute Protected Material
27 remain subject to this Protective Order as set forth in Paragraph 4
28 (DURATION), above.

1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.
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3 DATED: April 12, 2017

4 /s/ Marie A. McCrary /
5 Adam J. Gutride
Seth A. Safier
Marie A. McCrary
GUTRIDE SAFIER LLP
6 Attorneys for Plaintiff, Scott Miller

7 DATED: April 12, 2017

8 /s/ Cheryl S. Chang /
9 Cheryl S. Chang
Jessica A. McElroy
BLANK ROME LLP
10 Attorneys for Defendant, Yucatan
Foods, L.P.

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12 FOR GOOD CAUSE SHOWN, IT IS SO ORDERED.
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14 DATED: April 19, 2017

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16 _____
17 GAIL J. STANDISH
18 UNITED STATES MAGISTRATE JUDGE
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EXHIBIT A

ACKNOWLEDGEMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name],
of _____ [print or type full address],
declare under penalty of perjury that I have read in its entirety and
understand the Stipulated Protective Order that was issued by the United
States District Court for the Northern District of California on
_____, in the case of *Miller v. Yucatan*, Case No. 2:17-
CV-1470-DMG- GJS. I agree to comply with and to be bound by all the
terms of this Stipulated Protective Order and I understand and
acknowledge that failure to do so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not
disclose in any manner any information or item that is subject to this
Stipulated Protective Order to any person or entity except in the strict
compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this Action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this Action or any proceedings related to enforcement of this Stipulated Protective Order.

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1 Date: _____

2 City and State where sworn and signed: _____

3 Printed Name: _____

4 Signature: _____

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L.R. 5-4.3.4 Attestation

I, Marie A. McCrary, am the ECF user whose ID and password are being used to file the parties' STIPULATED PROTECTIVE ORDER. In compliance with L.R. 5-4.3.4, I hereby attest that Cheryl S. Chang has concurred in this filing.

/s/ Marie A. McCrary